



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO The Board of Environmental Protection
FROM Molly Zogby, Bureau of Land & Water Quality, Augusta
RE Consent Agreement for John Cushing d/b/a Cushing Construction

DATE June 15, 2006

Statute and Rule Reference: The Performance Standards for Excavations, 38 M R S A Section 490-D, establish the operating requirements for gravel pits. Section 490-D(8) states, in pertinent part, that all reclaimed and unreclaimed areas, of a mining operation must be naturally internally draining at all times unless a variance is obtained from the department.

The Protection and Improvement of Waters Act, 38 M R S A Section 413, states, in pertinent part, that no person shall directly or indirectly cause soil material to be discharged into waters of the State without a permit therefor from the Department.

Location: Readfield, Maine

Description: On June 17, 1997, Eric O. Elvin and Elmer E. Elvin submitted a "Notice of Intent to Comply" pursuant to Section 490-C of the Performance Standards for Excavations to mine sand and gravel from property adjacent to Route 17 in Readfield. John Cushing secured a lease agreement with Eric O. Elvin and Elmer E. Elvin to mine gravel and sand on this property.

On June 13, 2005, John Cushing notified the Department by telephone that he had breached a section of the upper pit, causing water stored in this area to flow into the lower pit and breach the pit wall. On June 16, 2005, Department staff inspected the gravel pit and found that the pit walls had been breached, causing a discharge of sediment into an adjacent stream and Maranacook Lake. At the time of the site inspection, the pit had ceased draining externally.

Environmental Issues: Gravel pits have the potential to create erosion and sedimentation problems from uncontrolled runoff, groundwater pollution from fuel spills and equipment leaks, air pollution from uncontrolled dust sources, noise pollution, traffic concerns and safety concerns from steep unstable slopes. These concerns are addressed by operating a pit in compliance with the Performance Standards for Excavations.

In January 2006, staff determined that no more external drainage occurs and the area is properly stabilized.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that John Cushing pay a monetary penalty of \$3,076.00, half of which has been paid. The remainder is due June 30, 2006.

Restorative actions should be successful in this situation and operational modifications will eliminate impacts beyond project boundaries.

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER
IN THE MATTER OF

JOHN CUSHING d/b/a
Cushing Construction
P O Box 171
Readfield, ME

) ADMINISTRATIVE
) CONSENT
) AGREEMENT
) (Perf Stds For Excavation, § 413)

This Agreement by and among John Cushing d/b/a Cushing Construction, the Maine Board of Environmental Protection (the "Board") and the State of Maine Attorney General is entered into pursuant to 38 M R S A § 347-A and in accordance with the Department of Environmental Protection ("Department") Consent Agreement Policy, as amended

The parties agree as follows

- 1 Eric O Elvin and Elmer E Elvin own a parcel of land located adjacent to Route 17 in Readfield, Maine as described and recorded in Book 4333 on Page 264 of the Kennebec County Registry of Deeds
- 2 On June 17, 1997, Eric O Elvin and Elmer E Elvin filed a "Notice of Intent to Comply" pursuant to the Performance Standards for Excavations, 38 M R S A § 490-C, to mine gravel and sand on the property described in Paragraph 1 of this Agreement
- 3 John Cushing d/b/a Cushing Construction as a sole proprietorship has secured a lease agreement with Eric O Elvin and Elmer E Elvin to mine gravel and sand on the property described in Paragraph 1 of this Agreement
- 4 The property described in Paragraph 1 of this Agreement contains a portion of a river, stream or brook as defined by the Natural Resources Protection Act, 38 M R S A § 480-B(9), and waters of the State as defined by the Protection and Improvement of Waters Act, 38 M R S A § 361-A(7) This stream is a tributary to Maranacook Lake
- 5 On June 16, 2005, Department staff inspected the property referred to in Paragraph 1 of this Agreement and found that the operator breached a section of the upper pit, causing water stored in this area to flow into the lower pit The lower pit wall was breached by the flow of water from the upper pit, causing a discharge of sediment into an adjacent stream and Maranacook Lake
- 6 By operating a gravel pit that drains externally without first obtaining a license from the Department, John Cushing d/b/a Cushing Construction violated the Performance Standards for Excavations, 38 M R S A § 490-D(8)
- 7 By discharging pollutants, namely soil material, into the waters of the State of Maine without a license from the Department, John Cushing d/b/a Cushing Construction violated the Protection and Improvement of Waters Act, 38 M R S A § 413(1)
- 8 On October 4, 2005, the Department issued a Notice of Violation to John Cushing d/b/a Cushing Construction for the violations described in Paragraphs 5, 6 and 7 of this Agreement

JOHN CUSHING d/b/a
Cushing Construction

2 ADMINISTRATIVE
) CONSENT
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- 9 On October 21, 2005, John Cushing d/b/a Cushing Construction submitted a restoration plan to completely restore the area of the gravel pit that drains externally. The restoration plan, prepared by Clark Consulting, is dated October 16, 2005. All restoration will be completed by November 1, 2006 in accordance with this plan, which was approved by Department staff.
- 10 On January 20, 2006, Department staff inspected the property described in Paragraph 1 of this Agreement and determined that the area that drained externally has been stabilized in accordance with the restoration plan prepared by Clark Consulting, dated October 16, 2005.
- 11 The Board has regulatory authority over the activities described herein.
- 12 This Agreement shall become effective only if it is accepted by the Board and approved by the Attorney General.
- 13 To resolve the violations referred to in Paragraphs 5, 6 and 7 of this Agreement, John Cushing d/b/a Cushing Construction agrees to pay the Treasurer, State of Maine, in accordance with the following, the sum of three thousand seventy six dollars (\$3,076.00) as a civil monetary penalty.
- A Upon signing the Agreement pay the sum of one thousand five hundred thirty eight dollars (\$1,538.00).
- B No later than June 30, 2006 pay the sum of one thousand five hundred thirty eight dollars (\$1,538.00).
- 14 The Board and the State of Maine Attorney General grant John Cushing d/b/a Cushing Construction a release of their causes of action against John Cushing d/b/a Cushing Construction for the specific violations listed in Paragraphs 5, 6 and 7 of this Agreement on the express condition that all actions listed in Paragraph 13 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of two (2) pages

JOHN CUSHING

BY

JOHN CUSHING

DATE

4-20-06

BOARD OF ENVIRONMENTAL PROTECTION

BY

MATTHEW SCOTT, CHAIR

DATE

SEEN AND AGREED TO
STATE OF MAINE

BY

MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL

DATE